

STATEMENT OF REP. JOHN CONYERS, JR.
Subcommittee on the Constitution
Hearing on “Legal Threats to Traditional Marriage:
Implications for Public Policy”
April 22, 2004

As we begin this hearing on legal threats to marriage, we all know the real question is whether this Committee and this Congress will pass an amendment enshrining discrimination into the Constitution. Such a move is not only unnecessary, it is divisive and extreme.

The amendment is unnecessary because each state is free to reach its own policy determination on this issue. President Bush set off the alarm bells on this issue in February when he said there is a grave risk “that every state would be forced to recognize any relationship that judges in Boston . . . choose to call a marriage.” This statement is totally false, and the President knows that.

Throughout American history, disputes over marriage, divorce, and adoption have all been dealt with on a state-by-state basis. Any first-year law student can tell you that the full faith and credit clause does not force one state to recognize a marriage from another state that conflicts with the first state’s public policy. In fact, perhaps we should have a first-year law student testify at these hearings.

The President also completely misunderstands Massachusetts law. The law specifically voids any marriage performed in Massachusetts if the couple is not eligible to be married in their home state. It is impossible for out-of-state residents to use a Massachusetts same sex marriage to circumvent their home state laws.

It is also inappropriate to argue that Congress has been forced into this position by virtue of “activist judges,” as the President has done. Anyone who has followed this debate knows that those in San Francisco, Portland, and New York who have pressed this issue are elected officials, not judges. As a matter of fact, it is judges in California who have stopped the licenses

from being issued. For the President to suggest otherwise is not only disingenuous but dishonest.

The amendment is divisive because it pits our citizens against each other on something that should be left to individual couples and to the states. The reason our founders developed our system of federalism is to permit the states to experiment on matters of policy such as this. We don't need a one-size-fits-all rule that treats people in San Francisco and New York in the same way as people in Grand Rapids. Doing so is more likely to inflame our citizens rather than placate them.

The amendment is misguided because it would, for the first time in our nation's history, write intolerance into our Constitution. We have had debates about civil rights in our nation before, but those were about ending slavery, liberating women, safeguarding freedom of religion, and protecting the disabled. We have even survived a debate over interracial marriage. But never until this day have we sought to legislate discrimination into our nation's most sacred charter as the Musgrave amendment would do.

As a side note, I think the title of this hearing is laughable. I have no idea how one couple's marriage can be threatened by another marriage, and no one has yet been able to explain it to me. I can only conclude that this theory of "threats to marriage" is a concoction of the far right. Perhaps those who have troubled marriages should look within themselves rather than blame the sexual orientation of another couple.

In closing, I have a proposal. If this Committee wants to legislate on gay and lesbian rights, we ought to pass a federal law that bans hate crimes or that protects these individuals against employment discrimination. I wait with baited breath to see if the President and my colleagues across the aisle will take me up on this offer.